



## **PARTIES**

2. The State of Iowa is a sovereign state of the United States of America.
3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Defendant David Kass resides at 40148 - 150<sup>th</sup> Street, LeMars, Plymouth County, Iowa.

## **JURISDICTION**

5. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(13) and 459.103(1). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.

6. The owner of a confinement feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the DNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2); 567 Iowa Admin. Code 65.16(1)(b)(1) and (2).

7. All persons required to submit a manure management plan to the department shall also pay to the department an indemnity fee, except those operations constructed prior to May 31, 1995, which were not required to have a construction permit. Iowa Code § 459.503; 567 Iowa Admin. Code 65.16(6). Any person submitting an original manure management plan must also pay to the department a manure management plan filing fee of \$250.00, which shall be included with each original manure management plan being submitted. Iowa Code § 459.316(1)(b); 567 Iowa Admin. Code 65.16(7).

8. Manure shall not be removed from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required, until the DNR has approved the manure management plan. Iowa Code § 459.312(5); 567 Iowa Admin. Code 65.16(5).

9. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the same manner as provided in chapter 455B, division I, unless otherwise provided. Iowa Code § 459.103(3).

10. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

11. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

12. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (hereafter EPC), institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(4).

13. The Attorney General is authorized under Iowa Code section 455B.109(3), on request of the DNR, to institute summary proceedings to recover the penalty and any accrued

interest where a penalty has been assessed by the DNR in a final administrative order but remains unpaid.

### **FACTS**

14. On July 18, 2005, the EPC voted to refer the matters described in paragraphs fifteen (15) through nineteen (19) below to the Attorney General for purposes of initiating judicial enforcement against this defendant.

15. Defendant David Kass owns and operates a confinement feeding operation for swine located in Section 34, Fredonia Township, Plymouth County, Iowa. The facility consists of two (2) finishing buildings with a total animal unit capacity of 800. Manure is stored in concrete below-building pits.

16. On July 21, 2004, DNR officials conducted an inspection at the defendant's facility. DNR officials discovered that the facility was constructed in 1999, and had an animal unit capacity of 800. The defendant had not submitted a manure management plan and had not paid any of the applicable fees.

17. On July 29, 2004, the director of the DNR issued Administrative Order No. 2004-AFO-84 to the defendant, a copy of which is attached, marked as Exhibit A and incorporated by reference. The Order required the defendant to submit a complete manure management plan and fees within 45 days of receipt of the Order. Administrative Order No. 2004-AFO-84 also assessed an administrative penalty of Three Thousand Dollars (\$3,000.00), pursuant to Iowa Code section 455B.109 and 567 Iowa Admin. Code 10.1 - 10.3. The defendant received a copy of the Order on August 3, 2004, as shown by the return receipt, a copy of which

is attached, marked as Exhibit B and incorporated by reference. The defendant did not appeal the Order.

18. The defendant failed to submit a manure management plan and applicable fees to the department. The defendant has continued to land apply manure without an approved manure management plan.

19. The defendant has failed to pay the administrative penalty referenced in paragraph seventeen (17).

### **VIOLATIONS**

20. The defendant has failed to submit an approvable manure management plan and applicable fees in violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(6), 65.16(7), and Administrative Order No. 2004-AFO-84.

21. The defendant has continued to land apply manure without an approved manure management plan in violation of Iowa Code section 459.312(5) and 567 Iowa Admin. Code 65.16(5).

22. The defendant has failed to pay the administrative penalty referenced in paragraph seventeen (17), even though the time for payment has passed, or any accrued interest in violation of Administrative Order No. 2004-AFO-66.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the court:

a. assess a civil penalty against Defendant David Kass, pursuant to Iowa Code section 455B.191(1), for each day of violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.312(5), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(5), 65.16(6), 65.16(7); and Administrative Order No. 2004-AFO-84, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

b. issue a permanent injunction ordering Defendant David Kass to submit an approvable manure management plan and pay the applicable fees, and further enjoining Defendant David Kass from any violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.312(5), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(5), 65.16(6), 65.16(7), and Administrative Order No. 2004-AFO-84; and

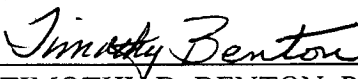
c. order that Defendant David Kass pay the administrative penalty assessed in Administrative Order No. 2004-AFO-84 and accrued interest, pursuant to Iowa Code section 455B.109(3).

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

DAVID R. SHERIDAN  
Assistant Attorney General

  
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ATTORNEYS FOR PLAINTIFF

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER

IN THE MATTER OF:

David Kass - ID #63199  
Section 34, Fredonia Township  
Plymouth County, Iowa

ADMINISTRATIVE ORDER  
NO. 2004-AFO-84

TO: David Kass  
40148 150<sup>th</sup> St.  
LeMars, IA 51031

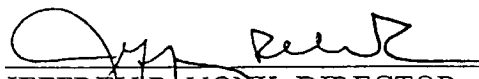
**VIOLATION:** 567 IAC 65.16(1)"b". You failed to submit a manure management plan (MMP) to the department.

**ORDER:** You shall submit your complete MMP and fee to Department Field Office #3 within 45 days of your receipt of this Order. In addition, a penalty of \$3,000.00 is assessed effective 30 days from your receipt of this Order, and shall be paid to the Department (address at bottom of Order) within 60 days of receipt of this Order, unless you appeal as provided below. \$500.00 of this amount is based on economic benefit for avoiding past fees and costs of complying with MMP requirements. \$1,500.00 of this amount is based on the gravity of the violation, considering the size of this facility, extensive agency efforts in detecting and addressing this violation, and the importance of the animal feeding operation program. \$1,000.00 of this amount is for culpability; the MMP requirements have been widely publicized in the industry and ample time for compliance was allowed.

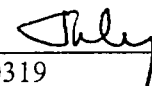
**AUTHORITY:** Iowa Code §455B.109, §459.103(3), 567 IAC 10.3, 567 IAC 65.16(1)"b".

**APPEAL:** Iowa Code §455B.109, 561 IAC 7.5(1) A written Notice of Appeal may be filed with the Director, at the address below, within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Kelli Book at (515) 281-8563 for more information regarding appeal procedures and resolution of this Order.

**NONCOMPLIANCE:** If you fail to comply with this Order you may be subject to further penalties pursuant to Iowa Code §455B.109 or penalties and injunction pursuant to Iowa Code §455B.191 and §459.603.

  
JEFFREY R. VONK, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES  
502 East Ninth Street; Wallace State Office Building; Des Moines, Iowa 50319

Dated this 29 day of

 , 2004

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits. *MG/HF*

1. Article Addressed to:

DAVID KASS  
40148 150<sup>TH</sup> STREET  
LEMARS IA 51031

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*x David Kass* ☐ Agent ☒ Addressee

B. Received by (Printed Name)

*David Kass*

C. Date of Delivery

*8-3-04*D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

## Service Type

- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service)

*7003 1680 0000 3173 5431*

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540



[Consent decree to be presented  
to judge for court approval]

IN THE IOWA DISTRICT COURT FOR PLYMOUTH COUNTY

STATE OF IOWA, ex rel., IOWA  
DEPARTMENT OF NATURAL  
RESOURCES (99AG23542),

Plaintiff,

vs.

DAVID KASS,

Defendant.

LAW NO. CVCV030910

**CONSENT ORDER,  
JUDGMENT AND DECREE**

NOW on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, the Court is presented with Plaintiff's Petition at Law seeking civil penalties, injunctive relief, and collection of administrative penalties pursuant to Iowa Code sections 455B.109(3) and 455B.191. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and subject matter of this action and the parties consent to the entry of this Consent Order, Judgment and Decree.

2. The defendant admits the violations.

**THEREFORE, IT IS ORDERED JUDGED AND DECREED THAT:**

1. Defendant David Kass shall pay a civil penalty of Five Thousand and no/100 Dollars (\$5,000.00) for the violations admitted herein, within ten (10) days of the entry of this Consent Order, Judgment and Decree. The defendant shall also pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance. Payment of the civil penalty and any interest shall be made to the State of Iowa within ten (10) days of the entry of this Consent Order, Judgment and Decree.

2. Defendant David Kass shall pay the administrative penalty of Three Thousand and no/100 Dollars (\$3,000.00), plus interest, totaling Three Thousand Five Hundred Forty and no/100 Dollars (\$3,540.00). Payment of the administrative penalty and interest shall be made to the Iowa Department of Natural Resources within ten (10) days of the entry of this Consent Order, Judgment and Decree.

3. Defendant David Kass is permanently enjoined from further violations of Iowa Code sections 459.312(1)(a)(1) and (2), 459.312(5), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(5), 65.16(6), 65.16(7), and Administrative Order No. 2004-AFO-84.

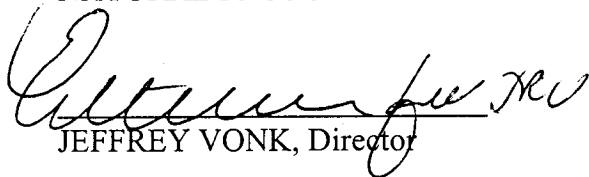
4. The Court retains jurisdiction of this matter to ensure compliance with the terms of this Order.

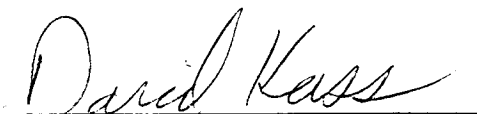
5. The costs of this action are taxed to the defendant in the amount of \$\_\_\_\_\_ (Clerk to enter).

\_\_\_\_\_  
JUDGE, Third Judicial District of Iowa

Approved as to form:

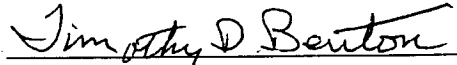
IOWA DEPARTMENT OF  
NATURAL RESOURCES

  
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DAVID KASS, Defendant  
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LeMars, Iowa 51031  
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